

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-000489

07/16/2009

HONORABLE JOSEPH B. HEILMAN

CLERK OF THE COURT
L. Muhammad
Deputy

ROBERT J HALT, et al.

MELANIE C MCKEDDIE

v.

SUNBURST FARMS EAST INC, et al.

STEPHANIE MONROE WILSON

JAMES L SULLIVAN
DAXTON R WATSON
ROBERT MACKENZIE
GEORGE A SCHADE JR.

SPECIAL MASTER ORDER OF REFERENCE

1. APPOINTMENT OF SPECIAL MASTER

The Court has considered the parties stipulation to appoint a Special Master. Because this case involves complex issues regarding a residential irrigation delivery system which is provided for in deed restrictions which run with the land, and the varying degrees of rights and interests of many different users of the irrigation water, as well as the proper formulation and documentation of the parties' stipulated settlement agreement made in Open Court on the record on April 17, 2009, in which the parties avowed their desire to end this string of litigation which has continued in excess of 10 years, this Court concludes that exceptional conditions exist which require the appointment of a Special Master.

IT IS ORDERED pursuant to Rule 53, A.R.Civ.P., appointing GEORGE A. SCHADE, JR. as Special Master in this action with full authority to make findings of fact, recommendations and conclusions of law on properly documenting and putting into full force and effect, the oral settlement agreement reached between the parties on the record in Open Court on April 17, 2009, and to reduce that agreement to a proper written form of Final Judgment which shall bind all the parties to this action and their heirs and assigns. The Court is well aware that such a final resolution will in all probability require an amendment to the CC&R's of the subdivision in question. The

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Special Master shall meet with the parties as necessary and advise the Court relating to the proper form and documentation of the final Order in this matter. The parties are reminded that the oral settlement agreement is a matter of record in this Court, made in Open Court, and the Court holds that such agreement is binding on the parties pursuant to the Ariz.R.Civ.P., Rule 80(d).

Although the Special Master is not appointed as an expert witness, the Court has considered the foundational guidelines contained in the Arizona Rules of Evidence, 702 to 706. The Special Master is appointed pending further Order of this Court or written resignation submitted to the Court by the Special Master.

2. SPECIAL MASTER AUTHORITY

IT IS FURTHER ORDERED that, in addition to the authority to make findings of fact, recommendations and conclusions of law in the above matters, the Special Master is authorized to do the following:

- (a) The Special Master may interview and request the participation of any and all persons who the Special Master deems in the Special Master's sole discretion to have relevant information or to be useful participants.
- (b) The Special Master has and shall exercise the power to regulate all of the proceedings in every hearing before the Special Master and to do all acts and take all measures necessary or proper for the efficient performance of the Special Master's duties under this Order.
- (c) The Special Master shall have the authority to require the parties' counsel to draft or have drafted (at a cost to be split 50/50 by each side) such documents as are necessary to effectuate the 80(d) agreement of the parties

The parties shall execute the appropriate releases in order for the Special Master to obtain relevant information, unless an appropriate motion for protective order is filed with the Court. Additionally, the parties shall provide the Special Master with a copy of the portion of the transcript of the proceeding of April 17, 2009 in this Court, which sets out the agreement of the parties. The Special Master is authorized to interview the parties or other persons in any combination, if initiated by the Special Master. Any party may contact the Special Master in writing, provided that the information received by the Special Master is provided to the opposing party and counsel (if any) at the same time it is provided to the Special Master.

The Special Master shall have the authority to communicate, in the Special Master's discretion, any and all information gathered during this term and any other information or opinions

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regarding the parties with any person whom the Special Master determines may require such information to further the fact-finding process and documentation process, including the Court and the attorneys of either party at the sole discretion of the Special Master.

3. CONFIDENTIALITY

There is no confidentiality relating to the parties' communications to the Special Master or concerning the Special Master's activities, findings, conclusions and Orders.

4. PROCEDURE

IT IS FURTHER ORDERED that the proceedings before the Special Master shall be conducted in accordance with the following procedures:

- (a) Either party, the Special Master or the Court may initiate proceedings before the Special Master. If initiated by the parties, it shall be initiated by motion. Both parties shall participate in any dispute resolution processes defined by the Special Master and shall cooperate with the rulings of the Special Master, subject to later judicial review.
- (b) The Special Master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the Special Master's receipt of this Order and shall be responsible for notifying the parties or their attorneys. Notice may be made by mail to the last known address supplied to the Court or, if circumstances demand, the Special Master may notify the parties orally and make a notation of the date and time of the notification. The Special Master shall proceed with all reasonable diligence. If a party fails to appear at a time and place appointed, the Special Master may proceed at that time or, in the Special Master's discretion, continue the meeting to a future day with notice to the absent party.
- (c) If either party fails to participate as requested by the Special Master, the Special Master may proceed to resolve the dispute, if necessary, without the participation of such party and may decide the dispute in favor of either the participating or non-participating party.
- (d) Notwithstanding the provisions of Rule 53(g), ARCP, the Special Master is not required to make a record of the proceedings. Any party, at its option and expense and upon reasonable notice and with the approval of the Special Master, may make a record of any evidence offered. The Special Master may, in the Special Master's discretion, tape-record or video-record or otherwise preserve any testimony.

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presented to the Special Master. The expense of said record may be ordered to be paid by the parties.

- (e) The Special Master or the parties may procure the attendance of witnesses as provided in Rule 53(e).
- (f) The Special Master may request the Court, with notice to the parties, to issue subpoenas to require the appearance of any person within the jurisdiction of this Court and to require the production of any documents within the jurisdiction of this Court or under the control of either party or their agents.
- (g) The Special Master shall determine in each instance the appropriate conflict resolution process and shall implement the same.
- (h) The Special Master may require the production of documents or things upon all matters falling within the scope of this Order and may rule upon the admissibility of evidence. The Special Master has the authority to place witnesses under oath, including the parties, and may examine them upon oath.
- (i) Additional rules applicable to the Special Master may be Ordered by the Court from time to time.

5. REPORT OF THE SPECIAL MASTER

- (a) All findings of fact, recommendations and conclusions of law (if necessary) and proposed final orders and documentation shall be filed in writing with the Clerk of the Court with a copy to the assigned division and each party and counsel, if represented. The findings of fact, conclusions of law (if necessary) and recommendations shall specify to what extent, if any, they were based on the agreement of the parties. Any report shall include a concise summary of the factual findings supporting it.
- (b) If transcripts, tape recordings or videotapes have been made of any portions of the proceedings, they shall be filed as part of the report.
- (c) The Special Master may, in the Special Master's sole discretion, submit a draft proposed final order or report to the parties or their counsel for the purpose of receiving their suggestions. The Special Master may, at the Special Master's sole discretion, require the parties or their counsel to submit proposed draft reports to the Special Master.

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6. OBJECTIONS AND APPEARANCES

The parties shall have ten days, after being served with notice of the filing of the proposed Final Order or Report, within which to file a written objection.

7. DISCLOSURE

IT IS FURTHER ORDERED that both parties shall keep the Special Master and the Court advised in writing of their current addresses and telephone numbers.

8. COSTS

IT IS FURTHER ORDERED the parties shall pay the costs of the Special Master divided evenly 50/50, subject to reallocation by the Court after consultation with the Special Master at the conclusion of litigation

IT IS FURTHER ORDERED that should the Special Master find that any dispute is the result of one party's bad faith actions, the Special Master may recommend that the party acting in bad faith pay the other party's costs of services provided by the Special Master necessitated by the party acting in bad faith.

LATER:

Any Motions presently pending shall be held in abeyance until after the Special Master has issued his report.

The Court finds good cause to waive the requirements of Rule 58(d). The signing of this minute entry constitutes an enforceable Order of the Court.

IT IS FURTHER ORDERED signing this minute entry as a formal written Order of the Court.

/S/ JOSEPH B. HEILMAN

HONORABLE JOSEPH B. HEILMAN
JUDGE OF THE SUPERIOR COURT

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**HONORABLE JOSEPH B. HEILMAN
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 WEST JEFFERSON
8th FLOOR, COURTROOM 814
PHOENIX, AZ 85003
602-506-0292 TEL**

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